85-367

Supreme Court, U.S.
FILED
AUG 6 1985
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

(_____ term, 19_____)

ROBERT L. HUSKEY,
Appellant,

v.

STATE OF TENNESSEE,
Appellee.

APPEAL FROM A FINAL JUDGMENT OF THE TENNESSEE SUPREME COURT DENYING PLAINTIFF'S RIGHT UNDER THE UNITED STATES AND TENNESSEE CONSTITUTIONS

JURISDICTIONAL STATEMENT

ROBERT L. HUSKEY
In Proper Person
P.O. Box 439
Manchester, TN 37355
Telephone: (615) 728-1800

35 pp

(a) QUESTIONS PRESENTED BY THE APPEAL:

(1) Does the taking by the State of a private practicing attorney's legal services against his will requiring his performance of 372.7 hours in the representation of an indigent criminal defendant with only token compensation constitute an unlawful and unconstitutional taking of said attorney's property without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution?

(2) Does the taking by the State of a private practicing attorney's legal services against his will requiring his performance of 372.7 hours in the representation of an indigent criminal defendant with only token compensation constitute an unlawful and unconstitutional taking of said attorney's particular services in violation of Article I, Section 21 of the Tennessee Constitution?

(3) Does a Tennessee statute which authorizes and requires a criminal trial court to appoint a practicing attorney to represent an indigent defendant and require that attorney's services to whatever extent and for whatever time required to fully represent that defendant, but limiting the compensation for that unlimited service to five hundred dollars ($500.00), violate the Fifth and Fourteenth Amendments of the United States Constitution which prohibit the taking of a citizen's property without just compensation?

(4) Does a Tennessee statute which authorizes and requires a criminal trial court to appoint a practicing attorney to represent an indigent defendant and require that attorney's services to whatever extent and for whatever time required to fully represent that defendant, but limiting the compensation for that unlimited service to five hundred dollars ($500.00), violate Article I, Section 21 of the Tennessee Constitution which prohibits the taking of a citizen's property or particular services without just compensation?

(b) PARTIES TO THE PROCEEDINGS: The only parties to this proceeding are the Plaintiff-Appellant, Robert L. Huskey, and the Defendant-Appellee, the State of Tennessee.

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(d) REFERENCE TO OFFICIAL REPORTS:

The official report of the opinion of the Tennessee Supreme Court appealed from is found at 688 S.W. 2d 417 (Tenn. 1985).

(e) GROUNDS OF JURISDICTION:

The suit in question is one filed by the Plaintiff, In Proper Person, in the Davidson County Chancery Court against the State of Tennessee seeking just compensation for representation rendered for a criminal defendant by court order of the trial court necessitating the performance of 372.7 hours of legal services for which only a token compensation of five hundred ($500.00) had been paid, and also seeking a declaration under the Declaratory Judgment Law of the State, that the Tennessee statute and the Tennessee Supreme Court rule which authorized and required such appointments without just compensation be declared unconstitutional as violating the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 21 of the Tennessee Constitution.

In the trial court, the State of Tennessee moved to dismiss and the Plaintiff moved for summary judgment supporting same with affidavits. The trial judge refused to grant the summary judgment and denied the Motion to Dismiss of the State, holding that the action of taking the lawyer's services may under certain circumstance constitute an unconstitutional taking of his property or services, but would not grant the Plaintiff summary judgment because he felt it must turn on the particular facts of the case as presented in trial. Both sides sought an interlocutory appeal because of the constitutional issues involved, and same was granted and approved by the Tennessee Supreme Court. The Tennessee Supreme Court in its opinion, with all due respect to that Honorable Body,

merely bypassed and ignored the constitutional issues which were the whole crux of the lawsuit and ruled that counsel should have appealed the fee through the criminal trial process and overturned the chancellor and dismissed the lawsuit completely, completely overlooking and bypassing the declaratory judgment suit therein seeking to declare the Tennessee statute and Tennessee Supreme Court rule unconstitutional as violating the U.S. and Tennessee Constitutions; and thus, by said ruling, the Supreme Court denied the Plaintiff the relief sought by him under the Constitution and upheld the validity of the Tennessee statute which Plaintiff claimed in his lawsuit to be repugnant to the Constitution.

Under the foregoing facts, the statutory basis then is found for appeal to this Honorable Court under the provisions of 28 U.S.C.S., Section 1257, which provides in pertinent part that a party may seek relief in this Honorable Court from a final judgment by the highest court of the State by appeal where there is drawn into question the validity of a statute of the State on the ground that it is being repugnant to the Constitution.

(f) PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS:

(1) Criminal actions - Provisions concerning - Due process of law and just compensation clauses. - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or

property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 5, U.S. Constitution

(2) § 1. Citizenship - Due process of law - Equal protection. - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment 14, Section 1
U.S. Constitution

(3) Sec. 21. No man's services or property taken without consent or compensation. - That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor.

Article 1, Section 21
Constitution of Tennessee

(4) 29-14-103. Construction of statutes and written instruments. - Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.

5, Tennessee Code Annotated
Section 29-14-103

the Court order of 372.7 hours of his professional services. The State approved a fee for the total work at the trial level of five hundred dollars ($500.00) for the 181.2 hours expended at that level, and paid that sum of five hundred dollars ($500.00). The State approved a fee of five hundred dollars ($500.00) for the appellate work which included 191.6 hours of legal services, but did not even pay that token amount until after suit was filed.

Plaintiff, after completion of the criminal case at all stages and complete review of his fee applications to the State, filed suit in Davidson County Chancery Court, the county in which the State Capitol of Tennessee is located, against the State of Tennessee, seeking just compensation for his services and seeking a declaration that the State statute and implementing Supreme Court rule which authorized and required the taking of his professional services without just compensation was unconstitutional as violating the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, Section 21 of the Tennessee Constitution. This constitutional violation as claimed by the Plaintiff has been the whole crux of his lawsuit from the beginning with the filing of the Complaint - that constitutional violation is his lawsuit.

The State sought a dismissal of the lawsuit based on sovereign immunity and in essence based on a contention that Plaintiff being an attorney had no right to claim an exercise of his constitutional rights since he as an attorney was inherently obligated to provide legal services free if necessary. Plaintiff filed a Motion for Summary Judgment verifying all of the allegations of the Complaint with his affidavit; filed an affidavit of the trial judge who had appointed him, the Honorable Gerald L. Ewell, which affidavit verified the appointment and the performance of those professional services in a commendable and professional manner by the Plaintiff, and verifying from the trial

judge's viewpoint that the case was an extraordinary case in which the State-authorized compensation was clearly inadequate; and also the Plaintiff supported his case and motion with an affidavit from the Honorable William S. Russell, who currently is a practicing attorney, but was formerly a trial judge and later a judge of the Court of Criminal Appeals for the State of Tennessee, and at times currently sits on all appellate level courts, by which affidavit Judge Russell evaluated in essence item by item the professional services rendered by the Plaintiff and placed a value on those services of twenty-three thousand, five hundred forty dollars and fifty cents ($23,540.50). The facts verified by Plaintiff's affidavit or that of Judge Ewell were never contradicted by the State. The affidavit of Judge Russell as to the fair market value of Plaintiff's services also was never contradicted. The only thing offered by the State in response was an affidavit of the executive secretary of the State Supreme Court saying that their rules and regulations didn't allow that much; however, nothing was ever offered to contradict Judge Russell's appraisal of the fair market value.

Pursuant to these respective motions, after they were argued before the chancellor, the Honorable Chancellor Brandt denied the motion of the State to dismiss and held that under certain extraordinary circumstances, as this case might come under, the taking of the Plaintiff's professional services under the referenced statute and Supreme Court rule might well constitute an unconstitutional taking without just compensation, entitling the Plaintiff to relief. He denied Plaintiff's Motion for Summary Judgment stating in substance that he felt it was a matter that would require actual trial on the merits rather than under affidavit, although those affidavits of Plaintiff were not contradicted. Both parties sought in-

terlocutory appeal to the Supreme Court to address the constitutional issues involved. That application was approved both by the trial court and the State Supreme Court and the matter, because it addressed constitutional issues, bypassed the interim appellate level and went straight to the Tennessee Supreme Court.

It was to these above referenced constitutional issues that the parties addressed themselves on in the appeal. The Tennessee Supreme Court, however, in its ruling merely ignored or bypassed those issues and held that Plaintiff, to obtain just compensation, should have appealed through the criminal court process the awards of fees. However, there was no such mechanism for such appeal available and a rule relied upon by the Supreme Court as a basis was not enacted until some three (3) years after the time referenced. The Supreme Court then upon determining that the action for just compensation would have been an appeal out of the criminal process rather that an individual civil action, dismissed the case in its entirety, completely overlooking or ignoring the other aspect of the lawsuit which was a declaratory judgment seeking to declare the referenced statute and implementing rule unconstitutional as violating the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 21 of the Tennessee Constitution. By so ruling and dismissing the lawsuit in its entirety, the Tennessee Supreme Court denied relief to the Plaintiff under the Tennessee and U.S. Constitutions and upheld the statute and rule which was contended to be repugnant to the Constitution.

(h) REASONS WHY THIS CASE WARRANTS FULL CONSIDERATION OF BRIEFS WITH OPPORTUNITY OF ORAL ARGUMENT:

The most valuable property I have is my legal services and the ability to sell those legal services and

thereby pay my office overhead and expenses and make a living for my family and myself. My legal services are the only product which I have to sell. It is recognized that for years in the legal community, lawyers have been appointed by the courts to represent indigents. When this practice first started, it was hardly a matter of consequence, for the number of appointed matters or the cases in which the court would appoint an attorney were relatively few and the requirements of that attorney were much more limited. Currently with the development of criminal law and the court decisions which have determined increased entitlements of indigents to representation and a wider range of cases and for a much wider range of services, have all served to not merely multiply, but to many times over multiply the utilization and requirements of appointed counsel. When the practice first started, few cases required an appointed counsel and the demands of that appointed counsel were relatively limited. Currently, however, speaking particularly from the criminal courts in which I practice, a significant portion, if not the majority of the criminal cases, turn out to fall in the technical category of indigent, entitling them to appointed counsel and in turn a practicing attorney who makes his living by selling legal services is appointed to represent that individual. The level of services currently demanded is vast on appointed criminal cases, and these cases tend to take the priority and in most cases if they are not settled require an appeal. Time demands that result on a attorney practicing law, particularly one such as myself who is a sole practitioner, are often very extensive. With the unreasonable limitations of fee for services an attorney such as myself subject to criminal appointment, particularly if a case is of significance, does not even recover enough from the State to cover his overhead expenses,

much less make a profit. For example, in the case referenced, the records show my overhead expenses while working under the State appointment were far in excess of the fee paid, and so not only were my services taken without reasonable pay, but I actually on this case and in other similar cases, go in the hole and have to in essence pay out of my pocket to cover overhead while I am representing the State or handling work for the benefit of the State without pay. To show the absurdity and unreasonableness of the monitary restrictions of the statute, while the State paid me under that limitation five hundred dollars ($500.00) for trying this very difficult and extensive case, the State paid the court reporter at State-approved rates for taking and transcribing the case, an amount of approximately four thousand, seven hundred dollars ($4,700.00).

Although the Chief Justice of the Tennessee Supreme Court failed to properly express same in the opinion written by the court in my case, roughly commensurate with the publication of that opinion, Chief Justice Cooper of the Tennessee Supreme Court issued a statement endorsing the adoption statewide of a public defender system and in support thereof stated that the people of Tennessee cannot continue to expect the attorneys of the State to continue forever to provide their legal services for free. I resound that plea to this Honorable Court and request an opportunity to argue this matter before your Honorable Body.

(i) NOT APPLICABLE

(j) APPENDIX OF ORDERS:

The following orders and/or documents are included herein as a Appendix to this Jurisdictional Statement and include the following:

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(2) Chancery Order entered April 21, 1983	16
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ROBERT L. HUSKEY

vs. 82-1864-111

STATE OF TENNESSEE

IN THE CHANCERY COURT
FOR THE STATE OF TENNESSEE
7th DIVISION
DAVIDSON COUNTY
PART THREE

OPINION

The plaintiff, an attorney practicing in Manchester, Tennessee, has sued the State of Tennessee over what he claims is inadequate compensation paid to him for representing an indigent criminal defendant by court appointment in the Circuit Court. The State has moved to dismiss, and the plaintiff has moved for summary judgment.

The State first contends that the suit is barred by the statute which prohibits suits to reach the State's treasury. T.C.A. §20-13-102.[1] The Court rejects the contention on two grounds. First, the plaintiff seeks delcaratory relief in addition to the attorney fee award. Second, and more importantly, the plaintiff bases his case principally on Article I, Section 21 of the Tennessee Constitution which provides:

Persons who are wronged by a violation of the State Constitution, particularly by the State itself, must have a forum to enforce the right; otherwise, the constitutional protection would be meaningless. The Legislature cannot prohibit citizens from enforcing a specifically granted constitutional guarantee.

The State's second contention is that the plaintiff does not state a claim. Simply stated, the State argues that an attorney whose services are demanded and taken has no right to receive adequate compensation.

1/ 20-13-102. Actions against state prohibited. -(a) No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea, or demurrer of the law officer of the state, or counsel employed for the state.

That issue has been the subject of litigation in a number of jurisdictions and courts have reached different conclusions.[2] Often the outcome was dictated by some statue or constitutional provision peculiar to that jurisdiction. For example, lawyers successfully pursuing a claim in New Hampshire were successful in large part because of a provision in the New Hampshire Constitution which grants all defendants "the right to counsel **at the expense of the State.**" New Hampshire Constitution, Pt. I, Art. 15 [emphasis added] **Smith v. State,** 118, N.H. 764, 394 A.2d 834 (1978).

In the leading federal case, the complaining lawyer specifically disclaimed a right to compensation based on involuntary servitude and based his claim solely upon the Fifth Amendment's prohibition against taking property without just compensation. **United States v. Dillon,** 346 F.2d 633 (9th Cir. 1965). In the instant suit, as noted, the plaintiff bases his claim principally upon a constitutional provision relating to services, not just property.[3]

This Court cannot conclude that a court appointed lawyer receiving admittedly inadequate compensation can never successfully pursue payment in excess of the statutory maximum. Rather, this Court concludes that under certain extraordinary circumstances, there may very well be an unconstitutional demanding and taking of services without just compensation.

2/ See Annotation, 3 ALR 4th 568 (1981).

3/ The Court held, however, that there was no "taking" a position contrary to the plaintiff's position in this case.

This is the same conclusion reached by the Supreme Courts of Oklahoma and Illinois. **Bias v. State,** 568 P. 2d 1269 (Ok. 1977); **People v. Randolph,** 219 N.E. 2d 337 (Ill. 1966). The Illinois case indeed involves extraordinary circumstances. The lawyers were required to participate in a trial 150 miles from where they practice. Jury selection alone consumed nine weeks. The lawyers filed their petition seeking additional compensation during the trial after 16 State's witnesses had testified and the State announced its intention to call 60 to 100 more witnesses. The illinois statue limited compensation to a maximum to $500 per defendant. **People v. Randolph, id.** at 339.

Following the lead of the Illinois Supreme Court in **Randolph,** the Oklahoma Supreme Court refused to issue a blanket decree that Court appointed lawyers can never be awarded compensation beyond the statutory maximum. Instead, the court adopted the "extraordinary circumstances" test and held that in those cases, the lawyer's property has been taken for public purposes. **Bias v. State, supra** at 1272. The Court enunciated the following standard to be applied:

> ...in order to obtain a compensation award above the statutory amount a lawyer must prove through clear and convincing evidence that (1) all extraordinary actions were taken in good faith, (2) all extraordinary work performed was necessary, (3) he was unable to maintain his practice, and (4) reasonableness of extraordinary fee. **Id.**

The Oklahoma approach seems reasonable. It strikes an appropriated balance between the obligation of an attorney to represent indigents and the protection of the attorney's constitutional guarantees. Lawyers do have an obligation to represent indigents. But lawyers also enjoy the same constitutional protection as do other citizens and cannot be forced into

financial ruin at the hand of the State. This court concludes that the plaintiff in his case has stated a cause of action. The State's motion to dismiss should be denied.

The Court cannot grant the plaintiff's motion for summary judgment because the matters he must establish are not established in the record. Accordingly, the plaintiff's motion for summary judgment is denied.

Finally, it should be noted that the Oklahoma standard contemplates that the court where the indigent's trial occured will decide the issue. In most cases, the issue was initially decided by the court where the indigent's trial occurred. Here, the plaintiff has elected to bring a separate suit in another court in another circuit. Ultimately, he may be required to seek his relief in the Coffee County Circuit Court. That court, after all, is in the best position to determine if the plaintiff's representation involved the extraordinary circumstances which result in a constitutional deprivation.

Robert S. Brandt
Chancellor

April 8, 1983
cc: Robert L. Huskey
Charles L. Lewis

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

ROBERT L. HUSKEY
Plaintiff,

CIVIL ACTION NO.: 82-1864-111

vs.

STATE OF TENNESSEE
Defendant

ORDER

THIS CAUSE came on to be heard before the Honorable Robert S. Brandt, Chancellor of Chancery Court of Davidson County, Part III, upon the Motion of the Defendant, State of Tennessee, to dismiss and Motion of the Plaintiff, Robert L. Huskey, for Summary Judgment, upon the 18th day of March, 1983.

Upon consideration of the pleadings, Affidavits and Briefs of both parties, the arguments of counsel in open Court, and from the entire file in this cause, from all of which the Court having considered same took the matter under advisement and thereafter on the 8th day of April, 1983, signed and had entered an Opinion setting forth his ruling in detail, which Opinion of the Court is adopted herein by reference as though copied herein verbatim.

Based upon the foregoing Opinion of the Court, adopted herein, the following Order is entered:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

(1) The Motion to Dismiss filed by the State is denied.

(2) The Motion for Summary Judgment filed by the Plaintiff is denied at this time, for not all matters required to be addressed by the criteria adopted by the Court in the Opinion is addressed by the Affidavits of proof in the record at this time.

ENTER: this the 21st day of April, 1983.

ROBERT S. BRANDT, Chancellor

APPROVED FOR ENTRY:
ROBERT L. HUSKEY

CERTIFICATE OF SERVICE

I, Robert L. Huskey, certify that I have served a copy of the foregoing proposed Order upon the attorney for the Defendant by mailing a copy of same to the Attorney General, State of Tennessee, ATTN: Mr. Charles L. Lewis, this the 14th day of April.

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

PART III

ROBERT L. HUSKEY
Plaintiff,

vs. NO. 82-1864-111

STATE OF TENNESSEE
Defendant

ORDER

This cause was heard upon plaintiff's renewed motion for summary judgment at the call of the regular motion docket on June 10, 1983, before the Honorable Robert S. Brandt, Chancellor. Upon consideration of the complaint, motion, affidavits, briefs, oral arguments of counsel, and this Court's previous rulings in the matter, the Court is of the opinion that there are genuine issues of material fact that prevent decision of this case upon motion for summary judgment.

It is therefore ORDERED pursuant to T.R.C.P. 56 that the plaintiff's motion for summary judgment be, and hereby is, denied.

ROBERT S. BRANDT
Chancellor, Part III

APPROVED FOR ENTRY: Entered July 6, 1983

CHARLES L. LEWIS
Assistant Attorney General
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Order has been forwarded by U.S. Mail, postage prepaid, to Robert L. Huskey, Post Office Box 439, 105 East High Street, Manchester, Tennessee 37355, on the 20th day of June, 1983.

CHARLES L. LEWIS
Assistant Attorney General

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

ROBERT L. HUSKEY
Plaintiff

vs.

STATE OF TENNESSEE
Defendant

ORDER FILED & ENTERED 1-17-84
MINUTE BOOK 26 PAGE 185
CIVIL ACTION NO.: 82-1864-111

AGREED ORDER GRANTING INTERLOCUTORY APPEAL

THIS MATTER CAME ON TO BE presented to the Honorable Robert S. Brandt, Chancellor of the Chancery Court of Davidson County, upon the Motion for an Interlocutory appeal filed by the Plaintiff and the agreement thereto of the State of Tennessee as reflected by the Signature hereon by the attorney for the State of Tennessee.

Upon a review of this matter pursuant to the Plaintiff's Motion, including a review of the Complaint itself and the various pleadings filed by parties including the two Motions for Summary Judgment filed by the Plaintiff and the Motion to Dismiss filed by the Defendant; and from all of which the Court finds and so holds that the Motion of the Plaintiff for an Interlocutory Appeal is meritorious and the Court finds in support thereof that because of the constitutional issues involved in this case and the questions generated by those constitutional issues, that an appeal at this stage allowing all these questions to be addressed before the Supreme Court would prevent needless, expensive and protracted litigation which would be generated by completing this case at the trial level before an appeal is taken; and it is apparent to the Court in this case that regardless of what ultimate decisions results in the trial Court that an appeal will be had. Further the Court finds that the ruling by the Supreme Court in regard to these constitutional issues, would of necessity affect the ultimate result in the trial of this case. Further the Court finds that regardless of which way the Supreme Court might rule on the constitutional issues, whether for the Plaintiff or the Defendant, that the appeal at this time to resolve those constitutional issues will result in a net reduction in the duration and expense of the litigation. If the Supreme court rules for the Plaintiff, a ruling in his favor, might completely eliminate the need for further trial of the matter in that everything needed for decision would be in the pleadings and the Motion for Summary Judgment and thus entitle Plaintiff relief at that stage. Another ruling for the Plaintiff on the constitutional issues could merely entitle him to proceed, but with other evidence, but the nature of that evidence would be clarified and the resulting trial and expense and time related to same

would of necessity be reduced. On the other hand, should the Supreme Court rule for the Defendant on the constitutional issues, the need for further proceedings on the matter in the trial Court would be eliminated. Thus the Court finds that regardless of what the ultimate rulings of the Supreme Court might be in regard to these issues, that the best interest of justice would be served, time and expense would be saved by allowing an appeal at this time.

It is the intention of this Agreed Order to authorize the addressing in the Supreme Court not only of the denial of Plaintiff's second Motion for Summary Judgment, said Order being entered July 6, 1983, but also the issues addressed in Plaintiff's first Motion for Summary Judgment and in the Defendant's Motion to Dismiss, both of which were addressed and denied by the Court by the Opinion of this honorable Court entered April 8, 1983 and the Order pursuant thereto entered the 21st day of April, 1983. The intention of this Order for an Interlocutory Appeal is to allow both parties to fully address all of the issues raised by their respective pleadings cited above to the honorable Supreme Court, with the belief that the allowing of such, will either eliminate the necessity of further proceedings in this honorable Court or at least greatly shorten those proceedings.

IT IS SO ORDERED, this the 17th day of January, 1984.

ROBERT BRANDT, CHANCELLOR

STATE OF TENNESSEE

CHARLES L. LEWIS, ASSISTANT
STATE ATTORNEY GENERAL

APPROVED FOR ENTRY
ROBERT L. HUSKEY

IN PROPER PERSON
P.O. Box 439
105 E. High Street
Manchester, Tennessee 37355

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ROBERT L. HUSKEY
Appellant

vs.

STATE OF TENNESSEE
Appellee

For Publication
FEB. 11, 1985
Davidson Equity
Honorable Robert S. Brandt
Chancellor

For Appellant:

Robert L. Huskey
Attorney-at-law
Manchester, Tennessee

For Appellee:

William M. Leech, Jr.
Attorney General & Reporter
Nashville, Tennessee

Charles L. Lewis
Assistant Attorney General
Nashville, Tennessee

OPINION

REVERSE AND DISMISSED WM. H.D. FONES, J.

OPINION

This case is before the Court on the grant of Rule Nine applications of both the State and the plaintiff, Huskey.

Plaintiff, a lawyer with offices in Manchester, Coffee County, Tennessee, filed a declaratory judgment in the Chancery Court of Davidson County against the State of Tennessee alleging that as appointed counsel for an indigent defendant, the statutory maximum fee was so inadequate that it amounted to an unconstitutional taking of his services without compensation under Article I, Section 21 of the Tennessee Constitution.

Huskey was appointed by the judge of the Circuit Court of Coffee County to represent Alan E. Lemay, an indigent defendant charged with armed robbery and felony murder.[1] He represented Lemay at the trial in that court and upon appeal to the Court of Criminal Appeals and this Court.

1/ The homicide Lemay was charged with occurred a few days prior to the re-enactment of the death penalty statute in Tennessee. thus, since it was not a death penalty case, Huskey's fee was subject to the statutory maximums of $100 per day for each day of trial, $500 for each case or proceeding in the trial court, a like maximum in the Court of Criminal Appeals and the Supreme Court. In capital cases, attorneys may be compensated in such amount as "the appropriate appellate court shall determine to be reasonable for the services rendered."

In due course, Huskey submitted an application for attorney's fees to the judge of the Circuit Court of Coffee County who appointed him and presided over the trial. His application for a fee, submitted on the form prescribed by this Court, claimed that he had expended 102.9 hours in the trial court and 78.3 hours in out-of-court preparation. He accompanied that form application with a petition, which was apparently in letter form, to the trial judge to award him a fee in excess of the statutory maximum. That petition is not a part of the record brought to this Court. However, the trial judge responded by letter dated February 4, 1978, agreed that the five hundred dollar fee was inadequate, expressed sympathy but denied Huskey's request for lack of authority to exceed the statutory maximum.

Huskey filed this suit in Davidson County on September 28, 1982.

The trial court overruled the State's motion to dismiss and overruled plaintiff's motion for summary judgment.

The Chancery Court of Davidson County has no jurisdiction to hear Huskey's claim for compensation for services rendered in a Coffee County criminal case.

The State did not raise the jurisdictional issue in the trial court, but moved to dismiss on the sole grounds of sovereign immunity. The learned chancellor overruled the motion to dismiss, but observed in his written opinion, sua sponte, as follows:

> Finally, it should be noted that the Oklahoma standard contemplates that the court where the indigent's trial occurred will decide the issue. In most of the reported cases, the issue was initially decided by the court where the indigent's trial occurred. Here, the plaintiff has elected to bring a separate suit in another court in another

circuit. Ultimately, he may be required to seek his relief in the Coffee County Circuit Court. That court, after all, is in the best position to determine if the plaintiff's representation involved the extraordinary circumstances which result in a constitutional deprivation.

The statutes dealing with the appointment and compensation of counsel for indigent defendants are found in title 40, chapter 14, part 2. T.C.A. § 40-14-208 expressly requires that attorneys seeking compensation for services rendered indigent defendants under court appointment shall file an application with the trial court stating the nature and extent of the services rendered and the expenses incurred. There is no question but that the Legislature intended the "trial court" to be the same court that appointed counsel and wherein the services were rendered, although such designation is not explicit in the statute. In T.C.A. § 40-14-206, the Legislature directed that this Court shall prescribe rules governing applications for compensation and expenses and "such other rules with regard to the accomplishment of the purposes of this part as it deems appropriate in the public interest."

We hold that the statutes governing appointment and compensation of counsel for indigent defendants in the trial courts of this State, vest exclusive jurisdiction of all claims for compensation for such services in the trial court where the appointment was made and the services rendered, regardless of whether the claim is asserted as a contractual claim against the State of Tennessee, a statutory claim, a constitutional claim, or otherwise based.

T.C.A. § 40-14-208 provides for the payment of compensation and expenses to attorneys representing indigent counsel "upon a certified copy of the court order fixing any compensation" which must be forwarded to the office of the Executive Secretary of the

Supreme Court for audit. The Executive Secretary of this Court performs no judicial or adjudicative function whatever. The audit is for the sole purpose of determining whether the statutory maximum hourly, daily and per case limitations have been observed.

A party dissatisfied with a trial court order awarding compensation may appeal as of right in accord with the provisions of Tennessee Rules of Appellate Procedure applicable to such appeals. The notice of appeal required by Rule 3 shall be filed with the trial court within thirty days after the entry of the order in the trial court adjudicating the claim for compensation.

Plaintiff also alleged that he filed a claim in the Court of Criminal Appeals for his services rendered on the appeal of the Lemay case to that Court and for the preparation and filing of a Rule eleven application to this Court. He asserted that he expended 181.3 hours out-of-court time and 10.3 hours in court on appellate work, and that he petitioned for the allowance of a fee in excess of the statutory maximum and "submitted reasons and justification therefor;" that a member of that Court, while sympathetic, determined that a fee of five hundred dollars was the maximum amount that plaintiff could be awarded.

This record does not contain plaintiff's so called reasons and justification why his appellate work was of such a nature and extent that his constitutional right to just compensation has been violated and certainly no such conclusion could be drawn from the face of the claim which he submitted.

It follows from our holding with respect to services rendered in the trial court, that no independent cause of action against the State of Tennessee can be pursued by a lawyer dissatisfied with the award of a fee for representing indigent defendants in the appellate courts. Such a claim must be timely filed in the criminal cases wherein the services were rendered and

review of an award of the Court of Criminal Appeals should be sought pursuant to T.R.A.P. 11.

The judgment of the Chancery Court of Davidson County is reversed and this suit is dismissed, without prejudice. Costs are adjudged against plaintiff.

W.H.D. Fones,
Justice

Concur:

Cooper, C.J.
Brock, Harbison, Drowota, JJ.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

ROBERT L. HUSKEY,
Appellant

vs.

STATE OF TENNESSEE
Appellee

FILED
April 16, 1985
Ramsey Leathers, Clerk
Supreme Court

For Publication
April 15, 1985
Davidson Equity
Honorable Robert S. Brandt
Chancellor

OPINION ON PETITION TO REHEAR

A petition to rehear has been filed by appellant, considered by the Court, and found to be without merit, and it is respectfully overruled at appellant's cost.

Wm. H. D. Fones,
Justice

Concur:

Cooper, C. J.
Brock, Harbison, Drowota, JJ.

IN THE TENNESSEE SUPREME COURT AT NASHVILLE

Supreme Court Docket No. 84-16-1

ROBERT HUSKEY,
Plaintiff-Appellant,

vs.

STATE OF TENNESSEE,
Defendant-Appellee

FILED
July 1, 1985
Ramsey Leathers, Clerk
Supreme Court

DAVIDSON COUNTY CHANCERY COURT CIVIL ACTION NO.: 82-1864-111

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

THE PLAINTIFF-APPELLANT, Robert L. Huskey, does hereby give notice to the Tennessee Supreme Court and to the State of Tennessee pur-

suant to Rule 10 of the Supreme Court Rules of the United States that he does hereby appeal to the United States Supreme Court to the ruling of the Tennessee Supreme Court entered February 11, 1985, which reversed the decision of the Davidson County Chancery Court and dismissed Plaintiff's lawsuit, and in turn the denial of Plaintiff's Petition to Rehear entered by the Tennessee Supreme Court April 15, 1985.

The statutory basis for the appeal to the United States Supreme Court is found in 28 U.S.C.S., Section 1257. The particular subsection applicable is Subsection 2.

RESPECTFULLY SUBMITTED
ROBERT L. HUSKEY
In Proper Person
P.O. Box 439
105 E. High Street
Manchester, TN 37355

CERTIFICATE OF SERVICE

I, Robert L. Huskey, certify that I have served a copy of the foregoing pleading upon the State of Tennessee by mailing a copy of same to the Office of the Attorney General, State of Tennessee, ATTN: Hon. Charles L. Lewis, 450 James Robertson Parkway, Nashville, TN 37219, First Class Mail, Postage Prepaid, this the 27th day of June, 1985.

ROBERT L. HUSKEY

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 1985, I have served three copies of the foregoing Judicial Statement to the Office of the State Attorney General, ATTN: Hon. Charles L. Lewis, 450 James Robertson Parkway, Nashville, Tennessee 37219, First Class Mail, Postage Pre-paid.

Robert L. Huskey

ROBERT L. HUSKEY
In Proper Person
P.O. Box 439
Manchester, Tn 37355